



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,048	12/01/2003	Malin E. Holcomb	100993.00005	2976

26710 7590 06/14/2005

QUARLES & BRADY LLP  
 411 E. WISCONSIN AVENUE  
 SUITE 2040  
 MILWAUKEE, WI 53202-4497

EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
----------	--------------

3636

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/725,048

Applicant(s)

HOLCOMB ET AL.

Examiner

Joseph F. Edell

Art Unit

3636

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

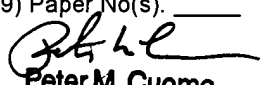
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-22.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Chew et al. fails to adequately disclose a seat back including a cushion attached to the shell having a body which stretches and contracts to conform to alteration of the curvature of the shell. Specifically, Applicant argues that Chew et al. fail to teach a cushion which stretches and contracts. However, Examiner argues that any foam cushioning on a curved shell of a back member must inherently stretch and conform to flexion, i.e. alteration, of the curvature of the shell upon an occupant resting his/her weight on the back member. Applicant attempts to read in limitations of claim 1 to require that the cushion stretch and contract in accordance with adjustment of the lateral sides. However, the claim merely requires that the cushion stretch or contract to any alteration of the curvature of the shell, which may arise from leaning against the shell or pressing a hand against the shell wherein the cushion would certainly stretch and contract. Next, Applicant argues that the Chew et al. fail to disclose seat back components covered by the same piece of foam. However, this limitation is not recited or implied by claims 1, 5, and 7-11. Moreover, column 2, lines 23-25 of Chew et al. set forth that the cushion has a foam covering system that accommodates adjustment of the lateral members of the back. With respect to the teachings regarding the cushion of Chew et al., Applicant proceeds to refer to sections of the disclosure of Chew et al. to suggest that Chew et al. teaches away from the claim limitations. However, claim 9 of Chew et al. further teaches the limitations of the instant application because a scarfed connection of foam cushioning is reasonably interpreted by Examiner to teach notched joint connection of foam pieces that will stretch and contract to conform with adjustment of the lateral supports of the back. With respect to the angled lateral portions of the back panel shown in Chew et al., Figure 2 of Chew et al. clearly shows that the lateral portions extend forward. Next, Applicant argues that the bracket and hook portion of Chew et al. are not connected by a threaded fastener. However, threaded fastener 33 (Figs. 5 and 6) pass through slot 28 of the bracket and through guide 39 of the hook portion, thus teaching the limitations recited in claim 11.

Next, Applicant argues that the 35 USC 103(a) rejection of claims 2-4, 6, and 12-22 is improper because Chew et al. teaches lateral adjustable sections of the seat back while Stulik teaches vertically adjustable sections of the seat back. The requisite test for obviousness should be evaluated in context of modifying the cushioning of Chew et al. to incorporate pleated sections instead of scarfed sections. Examiner argues that this motivation exists in view of the suggestion in Stulik that the pleated sections of a single piece of foam cushioning do not require extensive cutting and sewing of the cushioning to an outer fabric covering, which does not rely upon improper hindsight reasoning. With respect to claims 2, 3, and 12-22, see the above remarks regarding the angled lateral portions of the shell shown in Chew et al. See Examiner's remarks regarding the inherent stretchable nature of fabric in the previous Office Action. With respect to claim 18, no recitation requires that the cushion be a single unitary piece. As a result, the teachings of Chew et al. and Stulik teach all the limitations recited in claim 18.